



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,590	08/05/2003	Sachiko Liebergesell	1328.003USU	6542

7590 06/30/2006

George W. Rauchfuss, Jr.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square
Tenth Floor
Stamford, CT 06901-2682

EXAMINER

ALTER, ALYSSA M

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/634,590	Applicant(s) LIEBERGESELL, SACHIKO	
	Examiner Alyssa M. Alter	Art Unit 3762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-22.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

GEORGE R. EVANISKO
PRIMARY EXAMINER

6/23/6

Continuation of 3. NOTE: the insertion of "sheet" in the independent claims raise new issues that will require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: the Applicant argues, first and foremost, that the final rejection was improper. Firstly, the previous claims 5-6, 13-14 and 19-20 were originally rejected under 35 U.S.C. 112 2nd paragraph in the Office Action dated 7/18/05 since the scope of the claim was unclear since the claim depended from claim 1 but referred to claims 2-4. The claim was vague until the applicant clarified the scope of the claim in the response dated 10/6/05, and therefore the examiner rejected the claims under Motoi (US 6,584,359), the art of record. As such, the pending claims 1-22 are deemed to be properly rejected in a final rejection. In addition, Motoi was originally used in the first action to reject the claims that could be understood and used in the final rejection to reject claim 5, which was clarified by the applicant. This is a showing that the claim 5 was vague until clarified by the applicants response. Secondly the Applicant argues that the gloves of Motoi are not flexible pad elements. However, as previously stated in the Office Action dated 4/14/06, the gloves are in fact flexible pads. Even with or without the hands disposed within the gloves, there is still a thin flat layer of cushion that is in contact with the body. This thin flat cushion could be the entire glove, or just the front/palm pad of the glove when the hand is inserted into the glove. In addition, it is noted that the claims are COMPRISING CLAIMS, open ended claims, and therefore does not preclude the use of another flexible pad, such as the back of the gloves. Therefore in accordance with the Office Action dated 4/14/06 and the reasons stated above, the gloves are still considered to be flexible pad elements. Furthermore, the examiner also noted in the Office Action, an "alternative" if the gloves were not flexible pad elements, it would have been obvious to substitute them with flexible pad elements. As such, the examiner restated and reaffirms the position that the gloves are flexible pad elements. Lastly, the Applicants arguments that the device of Motoi does not disclose the use for oral hygiene and could not be utilized to treat oral hygiene. However, this argument argues the intended use of the device. The Applicant is reminded that the claim is a "device claim" and only needs to be capable of performing the intended use. Again as previously stated in the Office Action dated 4/14/06, the gloves could be placed in the mouth and are thus capable of being inserted into the oral cavity for treatment of oral hygiene.

Alyssa M. Alto
Alyssa M. Alto

GEORGE R. EVANISKO
GEORGE R. EVANISKO
PRIMARY EXAMINER
6/23/6